IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.102 of 1999
Date of decision:11.9.2006

The Commissioner of Income Tax, Jalandhar

...Appellant

v.

M/s Avet Chemicals (P) Limited, Jalandhar

...Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

This judgment will dispose of ITA Nos.102 and 17 of 1999. Facts have been taken from ITA No.102 of 1999.

This appeal has been preferred by the revenue proposing following substantial question of law:-

> "Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the deletion of penalty under section 271E by the CIT(A) on the ground that the assessee company was under bonafide belief that limit of Rs.20,000/- for accepting a deposit was in force in the year under consideration where the law specifically provided the cut off date as 1.4.1989?"

Relevant facts are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee company had repaid deposit/loan of Rs.10,000/- other than by account payee cheques or account payee bank drafts on 10.11.1988 to Shri Angad Bir Singh during the year under reference, in contravention of the provisions of section 269T of the Income Tax Act, 1961 (for short, 'the Act'). Accordingly, penalty

proceedings under section 271E of the Act were initiated by the then Dy.CIT Range-I, Jalandhar on 10.6.1991 by issue of notice under section 271E of the Act. Subsequently, penalty under section 271E was imposed by the then Dy.CIT, Range I, Jalandhar at Rs.10,000/- vide order passed by him on 21.10.1991.

On appeal, the CIT(A) Jalandhar deleted the said penalty vide his order passed in appeal No.700/91-92/CIT(A)/Jal., on 16.11.1992, holding that its imposition was not justified. The said order was affirmed by the Tribunal.

The CIT(A) held that the assessee was under bonafide belief that limit for deposit and repayment of loan in cash was Rs.20,000/- for the year under consideration.

It has been held by the Hon'ble Supreme Court in **Assistant Director of Inspection (Investigation) v. Kum.A.B.Shanthi,** (2002) 255 ITR 258 that if cash payment was on account of reasonable belief, penalty will not be justified. It was observed at Page 266:-

> "It is important to note that another provision, namely section 273B was also incorporated which provides that notwithstanding anything contained in the provisions of section 271D, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there as reasonable cause for such failure and if the assessee proves that there was reasonable cause for such failure to take a loan otherwise than by account-payee cheque or account-payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of section 273B in the Act. If there was a genuine and bonafide transaction and if for any reason the tax payer could not get a loan or deposit by account-payee cheque or demand draft for some bonafide reasons, the authority vested with the power to impose penalty has got discretionary power."

In view of the above, we answer the question against the

revenue and in favour of the assessee.

(Adarsh Kumar Goel)

Judge

Sept.11, 2006 (Ajay Kumar Mittal)

'gs' Judge